FILE COPY

No. 466

In the Supreme Court of the United States

OCTOBER TERM, 1932

ESTHER JACKSON PORTER, AS EXECUTRIX, AND RICHARD L. DAVISSON, AS SURVIVING EXECUTOR, OF THE ESTATE OF WILLIAM H. PORTER, DECEASED, PETITIONERS

v.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 466

ESTHER JACKSON PORTER, AS EXECUTRIX, AND RICHARD L. DAVISSON, as Surviving Executor, of the Estate of William H. Porter, Deceased, petitioners

v.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 189–194) is reported in 60 F. (2d) 673. The opinion of the Board of Tax Appeals (R. 85–104) is reported in 23 B. T. A. 1016.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 26, 1932. (R. 194–195.) The

145548—32

petition for a writ of certiorari was filed October 24, 1932. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under Section 302(c) or 302(d) of the Revenue Act of 1926, there should be included in the measure of the gross estate the value of property transferred by the decedent in trust, but subject to the power of the decedent alone to modify or alter the trust in any way except in his own favor or in favor of his estate.

DISCUSSION

The decision of the court below in upholding the validity of Section 302 (d) of the Revenue Act of 1926 as applied to the trust in question is, as the petitioners contend, in direct conflict with the decision of the Circuit Court of Appeals for the First Circuit in *Brady* v. *Ham*, 45 F. (2d) 454. It is also in conflict with the result reached by the Court of Appeals of the District of Columbia in *Cover* v. *Burnet*, 53 F. (2d) 915.

Although we believe that the decision below is correct, we do not oppose the present petition because of the conflict of decisions referred to.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

NOVEMBER, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932